

AMENDED IN SENATE JUNE 30, 1997
AMENDED IN ASSEMBLY APRIL 1, 1997

CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

ASSEMBLY BILL

No. 1432

Introduced by Assembly Member Papan

February 28, 1997

An act to amend Sections 134, 272, 1801, 1852.2, 1901, 3100, 3395, 3804, 4839, 31115, and 33301 of, to add ~~Section 600.3~~ *Sections 600.3 and 1917* to, and to repeal Sections 183, 600.2, ~~and 662, and 3357~~ of, the Financial Code, and to amend ~~Section 53651.4~~ *Sections 53651.4 and 53661* of the Government Code, relating to financial institutions.

LEGISLATIVE COUNSEL'S DIGEST

AB 1432, as amended, Papan. Financial institutions: banks.

(1) The Banking Law provides for the regulation of banks by the Commissioner of Financial Institutions. Under these provisions, the articles of incorporation of a bank are required to provide for assessment by the bank of its common shares upon order of the commissioner for the purpose of correcting an impairment of contributed capital, as defined.

This bill would repeal these and other related provisions.

(2) *The Banking Law provides for the Attorney General to bring actions at the request of the commissioner relative to recovery of penalties, liabilities, or forfeitures imposed for violations of the law.*

This bill would repeal these provisions and enact other provisions authorizing the commissioner to bring these and other related actions. The bill would provide for court-appointed receivers, monitors, conservators, or other designated fiduciary officers in certain cases and would also authorize the commissioner to make claims for restitution, disgorgement, or damages on behalf of injured persons, as specified.

(3) The Banking Law authorizes the commissioner to take possession of the property and business of a bank under certain circumstances.

This bill would additionally authorize the commissioner to take possession if the bank's tangible shareholders' equity is less than certain specified amounts.

~~(3)~~

(4) The Banking Law and other provisions of existing law authorize the commissioner to charge fees for bank examinations on a per diem basis.

This bill would instead provide for fees to be charged on an hourly basis.

(5) *Existing law provides for the commissioner to act as Administrator of Local Agency Security with respect to the investment of funds of local agencies.*

This bill would instead provide for the State Treasurer to act in this capacity.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 134 of the Financial Code is
2 amended to read:

3 134. "Contributed capital" means all of shareholders'
4 equity other than retained earnings. However, nothing in
5 this section shall prohibit a bank from transferring
6 amounts from time to time from its retained earnings to
7 its contributed capital, subject to any applicable statutes,
8 regulations, and generally accepted accounting
9 principles.

10 SEC. 2. Section 183 of the Financial Code is repealed.

1 SEC. 3. Section 272 of the Financial Code is amended
2 to read:

3 272. The commissioner, in addition to the annual
4 assessment, shall collect from each bank authorized to
5 engage in the trust business, to defray the cost of
6 examination, a fee not to exceed seventy-five dollars
7 (\$75) per hour for each examiner necessarily engaged in
8 the examination of the trust company, trust business, or
9 trust department. The commissioner shall assess the fee
10 upon completion of the examination of the trust company
11 or trust business and shall mail or otherwise deliver an
12 invoice for the fee to the institution. The institution shall
13 pay the fee within 30 days after the invoice is mailed or
14 otherwise delivered to it.

15 SEC. 4. Section 600.2 of the Financial Code is
16 repealed.

17 SEC. 5. Section 600.3 is added to the Financial Code,
18 to read:

19 600.3. (a) In this section:

20 (1) "Assessment provision" means the provision in the
21 articles of a bank that complies with the requirements of
22 Section 600.2, as in effect immediately before the
23 effective date of this section, or any predecessor statute.

24 (2) "Bank" means any (A) California state bank or (B)
25 corporation organized under the laws of this state for the
26 purpose of transacting business pursuant to Article 1
27 (commencing with Section 3500) of Chapter 19.

28 (b) On and after the effective date of this section, the
29 assessment provision in the articles of a bank shall no
30 longer be of any force or effect.

31 (c) Notwithstanding Sections 902 and 903 of the
32 Corporations Code, a bank may, on or after the effective
33 date of this section, amend its articles by deleting the
34 assessment provision with the approval of its board alone
35 and without any approval of its outstanding shares.

36 (d) (1) Any order issued before the effective date of
37 this section by the commissioner pursuant to Section 662,
38 as in effect immediately before the effective date of this
39 section or any predecessor statute, shall, if and to the
40 extent that the bank has not before that date levied and

1 collected through sale of shares or otherwise, an
2 assessment on its common shares, be deemed rescinded.

3 (2) Any proceeding commenced before the effective
4 date of this section by a bank to assess its common shares
5 in accordance with an order issued by the commissioner
6 pursuant to Section 662, as in effect immediately before
7 the effective date of this section or any predecessor
8 statute, shall be terminated on the effective date of this
9 section. On and after the effective date of this section, the
10 bank shall take no further action to levy or collect the
11 assessment on its common shares, and any lien on the
12 common shares created by the assessment shall be
13 deemed extinguished.

14 SEC. 6. Section 662 of the Financial Code is repealed.

15 SEC. 7. Section 1801 of the Financial Code is amended
16 to read:

17 1801. (a) Fees shall be paid to, and collected by, the
18 commissioner, as follows:

19 (1) The fee for filing with the commissioner an
20 application for a license is five thousand dollars (\$5,000).

21 (2) The fee for filing with the commissioner an
22 application for approval to acquire control of a licensee
23 is three thousand five hundred dollars (\$3,500).

24 (3) The fee for filing with the commissioner an
25 application for approval to establish a branch office of a
26 licensee is two hundred fifty dollars (\$250).

27 (4) The fee for filing with the commissioner an
28 application for approval to establish a branch office of an
29 agent is fifty dollars (\$50).

30 (5) The fee for filing with the commissioner an
31 application for extension of an approval to establish a
32 branch office is one hundred dollars (\$100).

33 (6) A licensee shall pay to the commissioner annually
34 on or before July 1, a licensee fee of two thousand five
35 hundred dollars (\$2,500).

36 (7) A licensee shall pay to the commissioner annually
37 on or before July 1, one hundred twenty-five dollars
38 (\$125) for each licensee branch office.

(8) A licensee shall pay to the commissioner annually on or before July 1, twenty-five dollars (\$25) for each agent headquarter office and each agent branch office.

(9) Whenever the commissioner examines a licensee or any agent of a licensee, the licensee shall pay, within 10 days after receipt of a statement from the commissioner, a fee of seventy-five dollars (\$75) per hour for each examiner engaged in the examination plus, if it is necessary for any examiner engaged in the examination to travel outside this state, the travel expenses of the examiner.

(b) (1) Each fee for filing an application with the commissioner shall be paid at the time the application is filed with the commissioner.

(2) No fee for filing an application with the commissioner shall be refundable, regardless of whether the application is approved, denied, or withdrawn.

SEC. 8. Section 1852.2 of the Financial Code is amended to read:

1852.2. Fees shall be paid to, and collected by, the commissioner, as follows:

(a) The fee for filing with the commissioner an application for a license shall be two thousand dollars (\$2,000).

(b) The fee for issuing a license shall be twenty-five dollars (\$25).

(c) Whenever the commissioner examines any licensee or any California agent of a licensee, that licensee shall pay, within 10 days after receipt of a statement from the commissioner, a fee of seventy-five dollars (\$75) per hour for each examiner engaged in the examination plus, in case it is necessary for any examiner engaged in the examination to travel outside this state, the travel expenses of the examiner.

SEC. 9. Section 1901 of the Financial Code is amended to read:

1901. (a) Whenever, in the judgment of the commissioner, it is necessary or advisable to make an extra examination of or to devote any extraordinary attention to any bank, any foreign bank, or any office of

1 a foreign bank, he or she has the authority to do so and to
2 charge and collect from the bank or foreign bank, in the
3 case of an extra examination, an amount not exceeding
4 seventy-five dollars (\$75) per hour for each examiner
5 engaged in the examination and, in the case of
6 extraordinary attention, an amount not exceeding the
7 department's expenses in providing the extraordinary
8 attention, including, but not limited to, compensation of
9 employees.

10 (b) Whenever in the judgment of the commissioner it
11 is necessary or expedient for any examiner engaged in
12 any examination to travel outside this state, the
13 commissioner may charge for the travel expenses of the
14 examiner.

15 SEC. 10. *Section 1917 is added to the Financial Code,*
16 *to read:*

17 *1917. (a) The commissioner may, in his or her*
18 *discretion, bring an action in the name of the people of*
19 *this state in a superior court to enjoin a violation of, to*
20 *enforce compliance with, or to collect a penalty or other*
21 *liability imposed under, this division or any regulation or*
22 *order issued under this division. The amount of any*
23 *penalty or liability collected shall be deposited into the*
24 *State Banking Account in the Financial Institutions Fund.*
25 *Upon a proper showing, a permanent or preliminary*
26 *injunction, restraining order, or writ of mandate shall be*
27 *granted, and a monitor, receiver, conservator, or other*
28 *designated fiduciary or officer of the court may be*
29 *appointed for the defendant or the defendant's assets, or*
30 *other appropriate relief may be granted.*

31 *(b) A receiver, monitor, conservator, or other*
32 *designated fiduciary officer of the court appointed by the*
33 *superior court pursuant to this section may, with the*
34 *approval of the court, exercise all of the powers of the*
35 *defendant's officers, directors, partners, trustees, or of*
36 *persons who exercise similar powers and perform similar*
37 *duties, including the filing of a petition for bankruptcy.*
38 *No action at law or in equity may be maintained by any*
39 *party against the commissioner, or a receiver, monitor,*
40 *conservator, or any other designated fiduciary officer of*

1 *the court by reason of their exercising these powers or*
2 *performing these duties pursuant to the order of, or with*
3 *the approval of, the superior court.*

4 *(c) If the commissioner determines it is in the public*
5 *interest, the commissioner may include in an action*
6 *authorized by subdivision (a), a claim for ancillary relief,*
7 *including, but not limited to, a claim for restitution,*
8 *disgorgement, or damages on behalf of the person injured*
9 *by the act or practice that is the subject matter of the*
10 *action. The court has jurisdiction to award additional*
11 *relief. An action taken by the commissioner does not*
12 *preclude consumers the opportunity to other legal*
13 *redress.*

14 *(d) The provision of subdivision (a) that authorizes*
15 *the appointment of a monitor, receiver, conservator, or*
16 *other designated fiduciary or officer of the court, and*
17 *subdivisions (b) and (c) do not apply to any of the*
18 *following:*

19 *(1) A state bank that is authorized by the*
20 *commissioner to transact commercial banking or trust*
21 *business.*

22 *(2) A national bank.*

23 *(3) A foreign (other state) bank that maintains a*
24 *branch office in this state in accordance with federal law,*
25 *the law of this state, and the law of the bank's domicile.*

26 *(4) A foreign (other nation) bank that is licensed by*
27 *the commissioner to maintain a branch office or agency,*
28 *as defined in Section 1700, in this state.*

29 *(5) A foreign (other nation) bank that maintains a*
30 *federal branch or agency, as defined in Section 1700, in*
31 *this state.*

32 *SEC. 11. Section 3100 of the Financial Code is*
33 *amended to read:*

34 *3100. The commissioner may, whenever it appears to*
35 *him or her that any of the conditions described in*
36 *subdivisions (a) to (h), inclusive, exist with respect to a*
37 *bank, forthwith take possession of the property and*
38 *business of the bank and retain possession until the bank*
39 *resumes business or its affairs are finally liquidated as*
40 *herein provided. The bank, with the consent of the*

1 commissioner, may resume business subject to conditions
2 prescribed by the commissioner. The term “bank”
3 wherever used in this chapter includes trust companies.

4 (a) The tangible shareholders’ equity of any bank is
5 less than:

6 (1) In case the bank is a commercial bank, the
7 greater of three percent of the bank’s total assets or one
8 million dollars (\$1,000,000); or

9 (2) In case the bank is a trust company other than a
10 commercial bank authorized to engage in trust
11 business, one million dollars (\$1,000,000).

12 (b) Any bank that has violated its articles or any law
13 of this state.

14 (c) Any bank that is conducting its business in an
15 unsafe or unauthorized manner.

16 (d) Any bank that refuses to submit its books,
17 papers, and affairs to the inspection of any examiner.

18 (e) Any officer of any bank who refuses to be
19 examined upon oath touching the concerns of the bank.

20 (f) Any bank that has failed to pay any of its
21 obligations as they came due or that is reasonably
22 expected to be unable to pay its obligations as they
23 come due.

24 (g) Any bank that is in a condition that it is unsound,
25 unsafe, or inexpedient for it to transact business.

26 (h) Any bank that neglects or refuses to observe any
27 order of the commissioner made pursuant to Section
28 1913 unless the enforcement of the order is restrained
29 in a proceeding brought by the bank.

30 ~~SEC. 11.—~~

31 *SEC. 12. Section 3357 of the Financial Code, as*
32 *amended by Section 398 of Chapter 1064 of the Statutes*
33 *of 1996, is repealed.*

34 ~~3357. Whenever by the terms of this division a~~
35 ~~penalty, liability, or forfeiture is imposed, such penalty,~~
36 ~~liability, or forfeiture shall be recovered in an action~~
37 ~~brought at the request of the commissioner, by the~~
38 ~~Attorney General, in the name of the people of the state,~~
39 ~~and the sum recovered shall be paid into the State~~
40 ~~Banking Account in the Financial Institutions Fund and~~

~~used in payment of claims against such fund. Any pecuniary penalty incurred by any bank or person because of the violation of any provision of this division may be compromised and a lesser amount than that prescribed by this division may be accepted by the commissioner at any time prior to the institution of action to recover the same.~~

SEC. 13. Section 3395 of the Financial Code, as amended by Section 406 of Chapter 1064 of the Statutes of 1996, is amended to read:

3395. Any person or any bank violating any provision of the foregoing sections of this article shall be liable to the people of the state in the amount of one hundred dollars (\$100) a day or part thereof during which ~~such that~~ violation continues. ~~Any court of competent jurisdiction in a proceeding brought by the commissioner may enjoin any person from using words in violation of the provisions of this article or from transacting business in violation of this division or in such a way or manner as to lead the public to believe that its business is that of a bank, commercial bank or trust company.~~

SEC. 14. Section 3804 of the Financial Code is amended to read:

3804. Fees shall be paid to and collected by the commissioner as follows:

(a) The fee for filing with the commissioner an application by an uninsured foreign (other state) bank for approval to establish a facility is two hundred fifty dollars (\$250).

(b) The fee for filing with the commissioner an application by an uninsured foreign (other state) bank that is licensed pursuant to Article 4 (commencing with Section 3860) to maintain a facility for approval to relocate or to close the facility is one hundred dollars (\$100).

(c) The fee for issuing a license pursuant to Article 4 (commencing with Section 3860) is twenty-five dollars (\$25).

(d) Each foreign (other state) state bank that on June 1 of any year maintains one or more California branch

1 offices shall pay, on or before the following July 1, a fee of
2 one thousand dollars (\$1,000) per California branch
3 office. However, the minimum fee paid by a foreign
4 (other state) state bank under this subdivision shall be not
5 less than three thousand dollars (\$3,000) and the
6 maximum fee shall be not more than fifty thousand
7 dollars (\$50,000).

8 (e) Each foreign (other state) bank that on June 1 of
9 any year maintains a facility but no California branch
10 office shall pay, on or before the following July 1, a fee of
11 two hundred fifty dollars (\$250) for each facility.

12 (f) If the commissioner makes an examination in
13 connection with a pending application, as described in
14 subdivision (a) or (b), the applicant shall pay a fee for the
15 examination of seventy-five dollars (\$75) per hour for
16 each examiner engaged in the examination plus, if in the
17 opinion of the commissioner it is necessary for any
18 examiner engaged in the examination to travel outside
19 this state, the travel expenses of the examiner.

20 (g) If the commissioner makes an examination of a
21 foreign (other state) state bank that maintains a
22 California branch office, the bank shall pay a fee for the
23 examination of seventy-five dollars (\$75) per hour for
24 each examiner engaged in the examination plus, if in the
25 opinion of the commissioner it is necessary for any
26 examiner engaged in the examination to travel outside
27 this state, the travel expenses of the examiner.

28 (h) If the commissioner makes an examination of a
29 facility of an uninsured foreign (other state) bank
30 licensed under Article 4 (commencing with Section
31 3860), the bank shall pay a fee for the examination of
32 seventy-five dollars (\$75) per hour for each examiner
33 engaged in the examination plus, if in the opinion of the
34 commissioner it is necessary for any examiner engaged in
35 the examination to travel outside this state, the travel
36 expenses of the examiner.

37 (i) If the commissioner makes an examination of a
38 facility of an insured foreign (other state) bank that does
39 not maintain a California branch office, the bank shall pay
40 a fee for the examination of seventy-five (\$75) per hour

1 for each examiner engaged in the examination plus, if in
2 the opinion of the commissioner it is necessary for any
3 examiner engaged in the examination to travel outside
4 this state, the travel expenses of the examiner.

5 ~~SEC. 12.—~~

6 *SEC. 15.* Section 4839 of the Financial Code is
7 amended to read:

8 4839. Fees shall be paid to, and collected by, the
9 commissioner, as follows:

10 (a) The fee for filing an application for approval of a
11 sale under this division shall be two thousand five
12 hundred dollars (\$2,500).

13 (b) The fee for filing an application for approval of a
14 merger under this division shall be two thousand five
15 hundred dollars (\$2,500).

16 (c) (1) The fee for filing an application for approval
17 of a conversion under this division shall be five thousand
18 dollars (\$5,000).

19 (2) The fee for issuing a certificate of authority or
20 license under subdivision (a) of Section 4928 or
21 subdivision (a) of Section 4948 shall be two thousand five
22 hundred dollars (\$2,500).

23 (d) The fee for issuing a certificate of authority or
24 license under any other provision of this division shall be
25 twenty-five dollars (\$25).

26 (e) The fee for issuing a certificate under Section 4862,
27 4879.17, 4891, 4930, or 4952 shall be twenty-five dollars
28 (\$25).

29 (f) In case the commissioner makes an examination in
30 connection with a pending application, as described in
31 paragraph (1), (2), (3), or (4), the applicant shall pay a
32 fee for the examination in the sum of seventy-five dollars
33 (\$75) per hour for each examiner engaged in the
34 examination plus, if in the opinion of the commissioner it
35 is necessary for any examiner engaged in the examination
36 to travel outside this state, the travel expenses of the
37 examiner.

38 (1) Examination of the selling depository corporation
39 in connection with a pending application for approval of
40 a sale of a whole business unit (as defined in Section 4840)

1 under Article 2 (commencing with Section 4845) of
2 Chapter 3.

3 (2) Examination of the partial business unit (as
4 defined in Section 4840) to be sold and any related affairs
5 of the selling depository corporation in connection with
6 a pending application for approval of a sale of a partial
7 business unit (as defined in Section 4840) under Article
8 2 (commencing with Section 4845) of Chapter 3.

9 (3) Examination of the purchasing depository
10 corporation in connection with a pending application for
11 approval of a sale of a whole business unit (as defined in
12 Section 4880) under Article 3.5 (commencing with
13 Section 4876.01) of Chapter 3 or of a partial business unit
14 (as defined in Section 4880) under Article 4.5
15 (commencing with Section 4878.01) of Chapter 3.

16 (4) Examination of the surviving depository
17 corporation in connection with a pending application for
18 approval of a merger under Article 4 (commencing with
19 Section 4908.01) of Chapter 4.

20 (5) Examination of the disappearing depository
21 corporation in connection with a pending application for
22 approval of a merger under Article 1 (commencing with
23 Section 4880) or Article 2 (commencing with Section
24 4895.01) of Chapter 4.

25 (6) Examination of the converting depository
26 corporation in connection with a pending application for
27 approval of a conversion under Article 1 (commencing
28 with Section 4920) or Article 2 (commencing with
29 Section 4940) of Chapter 5.

30 ~~SEC. 13.—~~

31 *SEC. 16.* Section 31115 of the Financial Code is
32 amended to read:

33 31115. (a) Fees shall be paid to, and collected by, the
34 commissioner, as follows:

35 (1) The fee for filing with the commissioner an
36 application for a license shall be two thousand dollars
37 (\$2,000).

38 (2) The fee for filing with the commissioner an
39 application for approval to acquire control of a licensee
40 shall be one thousand dollars (\$1,000).

(3) The fee for filing with the commissioner an application for approval for a licensee to merge with another corporation; an application for approval for a licensee to purchase all or substantially all of the business of another person, or an application for approval for a licensee to sell all or substantially all of its business or of the business of any of its offices to another licensee, shall be one thousand dollars (\$1,000). However, whenever two or more applications relating to the same merger, purchase, or sale are filed with the commissioner, the fee for filing each application shall be the quotient determined by dividing one thousand dollars (\$1,000) by the number of the applications.

(4) The fee for filing with the commissioner an application for approval to relocate the head office of a licensee shall be one hundred dollars (\$100).

(5) The fee for issuing a license shall be twenty-five dollars (\$25).

(6) Each person ~~which~~ *that* is licensed under this division on June 1 of any year shall pay, on or before the following July 1, a fee of two thousand dollars (\$2,000).

(7) Whenever the commissioner examines any licensee or any affiliate of a licensee, that licensee shall pay, within 10 days after receipt of a statement from the commissioner, a fee of seventy-five dollars (\$75) per hour for each examiner engaged in the examination plus, in case it is necessary for any examiner engaged in the examination to travel outside this state, the travel expenses of the examiner.

(b) (1) Each fee for filing an application with the commissioner shall be paid at the time when the application is filed with the commissioner.

(2) No fee for filing an application with the commissioner shall be refundable, regardless of whether the application is approved, denied, withdrawn, or abandoned.

~~SEC. 14.—~~

SEC. 17. Section 33301 of the Financial Code is amended to read:

1 33301. Fees shall be paid to, and collected by, the
2 commissioner, as follows:

3 (a) The fee for filing with the commissioner an
4 application for a license shall be two thousand dollars
5 (\$2,000).

6 (b) The fee for issuing a license shall be twenty-five
7 dollars (\$25).

8 (c) Whenever the commissioner examines any
9 licensee or any California agent of a licensee, that licensee
10 shall pay, within 10 days after receipt of a statement from
11 the commissioner, a fee of seventy-five dollars (\$75) per
12 hour for each examiner engaged in the examination plus,
13 in case it is necessary for any examiner engaged in the
14 examination to travel outside this state, the travel
15 expenses of the examiner.

16 ~~SEC. 15.—~~

17 *SEC. 18.* Section 53651.4 of the Government Code is
18 amended to read:

19 53651.4. (a) A depository ~~which~~ *that* uses eligible
20 securities of the class described in subdivision (m) of
21 Section 53651 shall, within 90 days after the close of each
22 calendar year or within a longer period as the
23 administrator may specify, file with the administrator a
24 report of an independent certified public accountant
25 regarding compliance with this article and with
26 regulations and orders issued by the administrator under
27 this article with respect to eligible securities of that class.
28 The report shall be based upon the audit, shall contain the
29 information, and shall be in the form the administrator
30 may prescribe. The depository shall provide a copy of the
31 report to the treasurer on request.

32 (b) If a depository ~~which~~ *that* is a state bank files with
33 the administrator, not less than 90 days before the
34 beginning of the calendar year, a notice that it elects to
35 be examined by the administrator instead of filing a
36 report of an independent certified public accountant
37 under subdivision (a) for that calendar year, the
38 depository shall be exempt from subdivision (a) for that
39 calendar year and shall for that calendar year be subject
40 to examination by the administrator regarding

1 compliance with this article and with regulations and
2 orders under this article with respect to eligible securities
3 of the class described in subdivision (m) of Section 53651.
4 The administrator shall provide a report to a treasurer
5 with deposits in the examined state bank upon request of
6 the treasurer.

7 (c) A national bank may apply to the administrator to
8 be examined, and the administrator, in his or her
9 discretion, may examine a national bank for the purposes
10 of satisfying the requirements of subdivision (a). The
11 administrator shall provide a report to a treasurer with
12 deposits in the examined national bank upon request of
13 the treasurer.

14 (d) Whenever the administrator examines a
15 depository pursuant to subdivision (b) or (c), the
16 depository shall pay, within 30 days after receipt of a
17 statement from the administrator, a fee of seventy-five
18 dollars (\$75) per hour for each examiner engaged in the
19 examination.

20 *SEC. 19. Section 53661 of the Government Code, as*
21 *amended by Section 789 of Chapter 1064 of the Statutes*
22 *of 1996, is amended to read:*

23 53661. (a) The ~~Commissioner of Financial~~
24 ~~Institutions~~ State Treasurer shall act as Administrator of
25 Local Agency Security and shall be responsible for the
26 administration of Sections 53638, 53651, 53651.2, 53651.4,
27 53651.6, 53652, 53654, 53655, 53656, 53657, 53658, 53659,
28 53660, 53661, 53663, 53664, 53665, 53666, and 53667.

29 (b) The administrator shall have the powers necessary
30 or convenient to administer and enforce the sections
31 specified in subdivision (a).

32 (c) (1) The administrator shall issue regulations
33 consistent with law as the administrator may deem
34 necessary or advisable in executing the powers, duties,
35 and responsibilities assigned by this article. The
36 regulations may include regulations prescribing
37 standards for the valuation, marketability, and liquidity of
38 the eligible securities of the class described in subdivision
39 (m) of Section 53651, regulations prescribing procedures
40 and documentation for adding, withdrawing,

1 substituting, and holding pooled securities, and
2 regulations prescribing the form, content, and execution
3 of any application, report, or other document called for
4 in any of the sections specified in subdivision (a) or in any
5 regulation or order issued under any of those sections.

6 (2) The administrator, for good cause, may waive any
7 provision of any regulation adopted pursuant to
8 paragraph (1) or any order issued under this article,
9 where the provision is not necessary in the public interest.

10 (d) The administrator may enter into any contracts or
11 agreements as may be necessary, including joint
12 underwriting agreements, to sell or liquidate eligible
13 securities securing local agency deposits in the event of
14 the failure of the depository or if the depository fails to
15 pay all or part of the deposits of a local agency.

16 (e) The administrator shall require from every
17 depository a report certified by the agent of depository
18 listing all securities, and the market value thereof, which
19 are securing local agency deposits together with the total
20 deposits then secured by the pool, to determine whether
21 there is compliance with Section 53652. These reports
22 may be required whenever deemed necessary by the
23 administrator, but shall be required at least four times
24 each year at the times designated by the Comptroller of
25 the Currency for reports from national banking
26 associations. These reports shall be filed in the office of the
27 administrator by the depository within 20 business days of
28 the date the administrator calls for the report.

29 (f) The administrator may have access to reports of
30 examination made by the Comptroller of the Currency
31 insofar as the reports relate to national banking
32 association trust department activities which are subject
33 to this article.

34 (g) (1) The administrator shall require the
35 immediate substitution of an eligible security, where the
36 substitution is necessary for compliance with Section
37 53652, if (i) the administrator determines that a security
38 listed in Section 53651 is not qualified to secure public
39 deposits, or (ii) a treasurer, who has deposits secured by
40 the securities pool, provides written notice to the



1 administrator and the administrator confirms that a
2 security in the pool is not qualified to secure public
3 deposits.

4 (2) The failure of a depository to substitute securities,
5 where the administrator has required the substitution,
6 shall be reported by the administrator promptly to those
7 treasurers having money on deposit in that depository
8 and, in addition, shall be reported as follows:

9 (A) When that depository is a national bank, to the
10 Comptroller of the Currency of the United States.

11 (B) When that depository is a state bank, to the
12 Commissioner of Financial Institutions.

13 (C) When that depository is a federal association, to
14 the Office of Thrift Supervision.

15 (D) When that depository is a savings association, to
16 the Commissioner of Financial Institutions.

17 (E) When that depository is a federal credit union, to
18 the National Credit Union Administration.

19 (F) When that depository is a state credit union or a
20 federally insured industrial loan company, to the
21 Commissioner of Financial Institutions.

22 (h) The administrator may require from each
23 treasurer a registration report and at appropriate times
24 a report stating the amount and location of each deposit
25 together with other information deemed necessary by
26 the administrator for effective operation of this article.
27 The facts recited in any report from a treasurer to the
28 administrator are conclusively presumed to be true for
29 the single purpose of the administrator fulfilling
30 responsibilities assigned to him or her by this article and
31 for no other purpose.

32 (i) (1) If, after notice and opportunity for hearing, the
33 administrator finds that any depository or agent of
34 depository has violated or is violating, or that there is
35 reasonable cause to believe that any depository or agent
36 of depository is about to violate, any of the sections
37 specified in subdivision (a) or any regulation or order
38 issued under any of those sections, the administrator may
39 order the depository or agent of depository to cease and
40 desist from the violation or may by order suspend or

1 revoke the authorization of the agent of depository. The
2 order may require the depository or agent of depository
3 to take affirmative action to correct any condition
4 resulting from the violation.

5 (2) (A) If the administrator makes any of the findings
6 set forth in paragraph (1) with respect to any depository
7 or agent of depository and, in addition, finds that the
8 violation or the continuation of the violation is likely to
9 seriously prejudice the interests of treasurers, the
10 administrator may order the depository or agent of
11 depository to cease and desist from the violation or may
12 suspend or revoke the authorization of the agent of
13 depository. The order may require the depository or
14 agent of depository to take affirmative action to correct
15 any condition resulting from the violation.

16 (B) Within five business days after an order is issued
17 under subparagraph (A), the depository or agent of
18 depository may file with the administrator an application
19 for a hearing on the order. The administrator shall
20 schedule a hearing at least 30 days, but not more than 40
21 days, after receipt of an application for a hearing or within
22 a shorter or longer period of time agreed to by a
23 depository or an agent of depository. If the administrator
24 fails to schedule the hearing within the specified or
25 agreed to time period, the order shall be deemed
26 rescinded. Within 30 days after the hearing, the
27 administrator shall affirm, modify, or rescind the order;
28 otherwise, the order shall be deemed rescinded. The
29 right of a depository or agent of depository to which an
30 order is issued under subparagraph (A) to petition for
31 judicial review of the order shall not be affected by the
32 failure of the depository or agent of depository to apply
33 to the administrator for a hearing on the order pursuant
34 to this subparagraph.

35 (3) Whenever the administrator issues a cease and
36 desist order under paragraph (1) or (2), the
37 administrator may in the order restrict the right of the
38 depository to withdraw securities from a security pool;
39 and, in that event, both the depository to which the order



1 is directed and the agent of depository which holds the
2 security pool shall comply with the restriction.

3 (4) In case the administrator issues an order under
4 paragraph (1) or (2) suspending or revoking the
5 authorization of an agent of depository, the administrator
6 may order the agent of depository at its own expense to
7 transfer all pooled securities held by it to such agent of
8 depository as the administrator may designate in the
9 order. The agent of depository designated in the order
10 shall accept and hold the pooled securities in accordance
11 with this article and regulations and orders issued under
12 this article.

13 (j) In the discretion of the administrator, whenever it
14 appears to the administrator that any person has violated
15 or is violating, or that there is reasonable cause to believe
16 that any person is about to violate, any of the sections
17 specified in subdivision (a) or any regulation or order
18 issued thereunder, the administrator may bring an action
19 in the name of the people of the State of California in the
20 superior court to enjoin the violation or to enforce
21 compliance with those sections or any regulation or order
22 issued thereunder. Upon a proper showing a permanent
23 or preliminary injunction, restraining order, or writ of
24 mandate shall be granted, and the court may not require
25 the administrator to post a bond.

26 (k) In addition to other remedies, the administrator
27 shall have the power and authority to impose the
28 following sanctions for noncompliance with the sections
29 specified in subdivision (a) after a hearing if requested by
30 the party deemed in noncompliance. Any fine assessed
31 pursuant to this subdivision shall be paid within 30 days
32 after receipt of the assessment.

33 (1) Assess against and collect from a depository a fine
34 not to exceed two hundred fifty dollars (\$250) for each
35 day the depository fails to maintain with the agent of
36 depository securities as required by Section 53652.

37 (2) Assess against and collect from a depository a fine
38 not to exceed one hundred dollars (\$100) for each day
39 beyond the time period specified in subdivision (b) of
40 Section 53663 the depository negligently or willfully fails

1 to file in the office of the administrator a written report
2 required by that section.

3 (3) Assess against and collect from a depository a fine
4 not to exceed one hundred dollars (\$100) for each day
5 beyond the time period specified in subdivision (e) that
6 a depository negligently or willfully fails to file in the
7 office of the administrator a written report required by
8 that subdivision.

9 (4) Assess and collect from an agent of depository a
10 fine not to exceed one hundred dollars (\$100) for each
11 day the agent of depository fails to comply with any of the
12 applicable sections specified in subdivision (a) or any
13 applicable regulation or order issued thereunder.

14 (l) (1) In the event that a depository or agent of
15 depository fails to pay a fine assessed by the administrator
16 pursuant to subdivision (k) within 30 days of receipt of
17 the assessment, the administrator may assess and collect
18 an additional penalty of 5 percent of the fine for each
19 month or part thereof that the payment is delinquent.

20 (2) If a depository fails to pay the fines or penalties
21 assessed by the administrator, the administrator may
22 notify local agency treasurers with deposits in the
23 depository.

24 (3) If an agent of depository fails to pay the fines or
25 penalties assessed by the administrator, the administrator
26 may notify local agency treasurers who have authorized
27 the agent of depository as provided in Sections 53649 and
28 53656, and may by order revoke the authorization of the
29 agent of depository as provided in subdivision (i).

